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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,027	09/25/2003	James Kemp	IR 6896-07	4552
23909	7590	11/29/2005	EXAMINER	
COLGATE-PALMOLIVE COMPANY 909 RIVER ROAD PISCATAWAY, NJ 08855			DOAN, ROBYN KIEU	
			ART UNIT	PAPER NUMBER
			3732	

DATE MAILED: 11/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.		Applicant(s)	
	10/670,027		KEMP ET AL.	
	Examiner		Art Unit	
	Robyn Doan		3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 1-13 and 19-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-18 and 22-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>05/25/05; 10/26/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Claims 1-13 and 19-21 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/31/05.

Applicant's election without traverse of species II, claims 14-18 and 22-30, in the reply filed on 10/31/05 is acknowledged.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 14 and 22 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 9, 14 and 15 of copending Application No. 11/077,170. Although the conflicting claims are not identical, they are not patentably distinct from each other.

It is clear that all the elements of claims 14 and 22 are to be found in claims 1, 9 and 15. Clearly, the term "bristles" in line 2 of claim 14 is synonymous with the term "cleaning elements" as used in claim 1 of the copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 14, 16, 18, 22, 25 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 5, 7, 8, 22, 23, 31-34 and 48 of copending Application No. 10/442,905. Although the conflicting claims are not identical, they are not patentably distinct from each other because all the elements of claims 14, 16, 18, 22, 25 are to be found in claims 1, 5, 7, 8, 22, 23, 31-34 and 48.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 14, 16, 18, 22, 25 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3, 5, 6 and 19 of copending Application No. 10/151,580. Although the conflicting claims are not identical, they are not patentably distinct from each other because all the elements of claims 14, 16, 18, 22, 25 are to be found in claims 1, 3, 5, 6 and 19.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Del Mas (IDS cited reference) in view of Lee (U.S. Pat. # 6,066,021).

With regard to claims 14 and 26, Del Mas discloses a toothbrush (figs. 1, 2) comprising a head connected to a neck, the neck being integrally connect with a handle see figure 1, the head having a plurality of bristles extending outwardly therefrom; the handle having a figurine attached thereto see figures 1, 2. Del Mas does not disclose the handle having a compartment and a figurine being provided and held stationary in the compartment. Lee discloses a glass-drinking vessel (fig. 1) including a handle (12)

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including a compartment (13), a figurine (2) being provided and held stationary in the compartment. The figurine may be removed and replaced in the compartment. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the figurine as taught by Lee into the handle of Del Mas for providing attraction to the handle.

Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Del Mas in view of Lee as applied to claim 14 above, and further in view of Blaustein et al (U.S. Design Pat. # D459, 584).

With regard to claims 16 17, Del Mas in view of Lee disclose a toothbrush comprising all the claimed limitations in claim 14 as discussed above except for the handle being in the shape of a rocket-ship which has a plurality of fins extending from a bottom portion which stimulate rocket ship fins and act as support feet for holding the toothbrush in an upright position. Blausstein et al discloses a rocketship toothbrush handle (fig. 1) comprising a handle having a plurality of fins, see figure 1, extending from a bottom portion of the handle which act as support feet for holding the toothbrush in an upright position. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the rocketship handle as taught by Blaustein et al into the handle of Del Mas in view of Lee for the purpose of entertaining the children while brushing the teeth.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Del Mas in view of Lee as applied to claim 14 above, and further in view of Luball (U.S. Pat. # 2,016,644).

With regard to claim 24, Del Mas in view of Lee disclose a toothbrush comprising all the claimed limitations in claim 14 as discussed above except for the handle further having an indicia band. Luball discloses a toothbrush (figs. 2, 3 and 7) comprising a handle (1) having an indicia (8) band (7). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the indicia band as taught by Luball into the toothbrush of Del Mas in view of Lee in order to identify the brushes among the users.

Claims 22 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Del Mas in view of Lee as applied to claim 14 above, and further in view of Tortorice (U.S. Pat. # 6,000,410).

With regard to claims 22 and 25, Del Mas in view of Lee disclose a toothbrush comprising all the claimed limitations in claim 14 as discussed above except for the neck removably connects with the handle and the handle being transparent. Tortorice discloses a toothbrush (fig. 3) comprising a neck (26) removably connecting (at 48) with a handle (44) and the handle being made of transparent material (abstract, lines 4-5). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the removable neck and the transparent handle as taught by Tortorice into the toothbrush of Del Mas in view of Lee for the purpose of

allowing multiple handles to be used with the same brush component and viewing the decorative items which are contained within the handle.

Claims 15, 18 and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Del Mas in view of Lee as applied to claim 14 above, and further in view of McCord (U.S. Pat. # 3,782,397).

With regard to claims 15, 18 and 27-30, Del Mas in view of Lee disclose a toothbrush comprising all the claimed limitations in claim 14 as discussed above except for the handle being in the shape of a display case and having two sections which may be connected and disconnected. Del Mas in view of Lee also does not disclose the handle having at least one rib or four vertical ribs extending into the compartment and portions of the handle contact the figurine to further retain the figurine stationary in the compartment. McCord discloses a toothbrush and dental floss dispenser (figs. 7, 7A) comprising a toothbrush handle (1) with two sections (1, 3) which may connect and disconnected, see figure 7. The handle being in the shape of a display case, see figure 2; the handle also including a compartment for holding a dental floss dispenser, see figure 7; at least one rib (4) extending in the handle compartment (col. 2, lines 11-16) for retaining the dental floss (6) stationary in the compartment, the ends of the rib (4) contacting one plug (5) of the dental floss 96) to further retain the dental floss stationary in the compartment, see figure 2. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the particular handle as taught by McCord into the handle of Del Mas in view of Lee in order to hold an item

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stationary within the compartment of the handle. It would also have been obvious to one having an ordinary skill in the art at the time the invention was made to construct four vertical ribs inside the handle's compartment since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Del Mas in view of Lee as applied to claim 14 above, and further in view of McCord and also further in view of Tortorice

With regard to claim 23, Del Mas in view of Lee and further in view of McCord disclose a toothbrush comprising all the claimed limitations in claim 14 as discussed above except for the two sections of the handle being transparent. Tortorice discloses a toothbrush (fig. 3) a handle (44) being made of transparent material (abstract, lines 4-5). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the transparent handle as taught by Tortorice into the toothbrush of Del Mas in view of Lee and further in view of McCord for the purpose of viewing the decorative items which are contained within the handle.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Powell is cited to show the state of the art with respect to a cup

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having a figurine being provided on the bottom of the cup. Hickey is cited to show a toothbrush having a handle with a shape of a rocketship. Brown shows a toothbrush having an indicia band on the handle.

The drawings filed 09/25/2003 have been approved by the Examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robyn Doan
Examiner
Art Unit 3732